

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 65 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAMANLAL MANILAL SHAH

Versus

CHANDANBEN @ CHANDRABALABEN N. GANDHI W/O. A R GANDHI

Appearance:

MR AJ PATEL for the Appellants.
MR MC SHAH for the Respondents.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 18/02/97

ORAL JUDGMENT

Appellants who are Receivers appointed in Insolvency Petition No. 4 of 1970 have filed this First Appeal under S. 96 of the Code of Civil Procedure, challenging the judgment and decree dated 30.1.1978 passed by the learned Joint Civil Judge (SD), Baroda, in Special Civil Suit No. 166 of 1971, whereby the learned trial Judge dismissed the suit of the appellants.

2. The plaintiffs who are the receivers appointed by the competent court in Insolvency Petition No. 4/70 had filed Special Civil Suit No. 166/71 in the court of the learned Civil Judge, Baroda against the defendants to recover Rs.15,500/- being the amount of unpaid value of the goods supplied by the insolvent firm to the defendants, which was debited in the books of account of the firm, viz. Messrs. Jamnadas Kalidas Gandhi. It is averred by the plaintiffs that a total amount of Rs.25,069.38 ps. remained due from the defendants. However, an amount of Rs.11,273/- was time barred and therefore, the suit was filed for recovering Rs.15,500/-. It is averred that Manharlal Nathalal and Kantilal, were the partners of the firm and the said partners were declared insolvent and with a view to defraud the creditors, credited an amount of Rs.25,069.38 ps. in their books of account. The plaintiffs being receivers of the insolvent firm had obtained permission from the insolvency court to file the suit against the defendants.

3. Defendants who are the step-sisters of the insolvent partners resisted the suit by filing their written statement at Ex.15 inter alia contending that they have not purchased any goods from the insolvent firm. It is contended that the partners viz. Kantilal and Manharlal are the step-brothers of the defendants and they had taken custody of the defendants on the death of their mother, by order of the court, which was passed in Misc. Civil Application No. 8 of 1960. While taking their custody, both the step-brothers had undertaken to provide shelter and food and to maintain them in their house. It is further contended that the insolvents were their trustees and in that capacity, they were in possession of immovable and movable properties of the defendants and therefore, the defendants are not liable to pay any amount or expenses incurred by the insolvents for their maintenance and education. It is further contended that the books of account are concocted and false and the suit be dismissed with costs.

4. The learned trial Judge framed issues at Ex.16. On behalf of the plaintiffs one of the Receivers was examined at Ex.55. On behalf of the defendants, defendant no.1 Chandrabala was examined at Ex.76. The accountant who had made entries in the books of account, viz. Shantilal was examined at Ex.81. Plaintiffs and defendants produced documentary evidence in the nature of books of account, order passed in Misc. Civil Application No. 8 of 1960, judgment and order passed in Spl. Civil Suit No. 11/59, etc..

5. After appreciating oral as well as documentary evidence, the learned trial Judge came to the conclusion that in the books of account debit entries were made and it was decided not to recover any amount from the defendants as the said amounts which were debited in the books of account were towards expenses for maintenance and education of the minor sisters. The learned trial Judge also concluded that even though the entries in the books of account were proved, there is no corroborative piece of evidence to fasten the liability on the defendants for payment of the said amount. The learned trial Judge also concluded that in Misc.Civil Application No. 8 of 1960, both the step-brothers who were declared insolvent had undertaken, while taking custody of the minor sisters, to provide for their maintenance and education. In view of these findings, the learned trial Judge dismissed the suit which has given rise to filing of this First Appeal by the original plaintiffs who are Receivers of the insolvent firm.

6. Learned Advocate Mr.AJ Patel for the appellants has strenuously urged that the entries in the books of account were proved and there is also corroborative piece of evidence of the Receivers as well as Accountant Shantilal to connect the defendants with the liability to pay Rs.15,500/- to the insolvent firm. He further argued that the insolvents with a view to defraud their creditors had posted false entries by crediting the amount of Rs.25,069.38ps. in their books of account. It is therefore, submitted that the appeal should be allowed and the defendants should be made liable to pay the amount of Rs.15,500/- to the insolvent firm.

7. It is an admitted position that the firm of Messrs. Jamnadas Kalidas Gandhi was being run by the two brothers - Manharlal Nathalal and Kantilal. Defendants Chandrabalaben Nathalal and Nirmalaben Nathalal are the step-sisters of the two partners Manharlal and Kantilal. After the death of the mother of the two sisters, their maternal uncle Fogatlal had filed Misc.Civil Application No. 8 of 1960 in the Court of the learned Assistant Judge at Baroda for custody of the two sisters. In the said application for custody, the step-brothers Manharlal and Kantilal had undertaken to maintain the two sisters and therefore, the court had entrusted to the step-brothers the custody of the two sisters. Thereafter the two sisters who are the defendants, were brought up at the house of Kantilal. It appears that in the books of account, some debit entries were made towards expenses incurred for the maintenance of the two sisters. Some about was debited towards expenses for education of the

two sisters. In view of the undertaking given by one of the partners that he would maintain the two sisters, the two brothers who were the partners of the insolvent firm could not claim maintenance for the two sisters. The Accountant who had maintained the books of account also admitted in his evidence that his master ('sheth') had told him that the amount of Rs.25,069.38ps. is not to be recovered from the defendants. Even if the entries in the books of account are taken to have been proved, there is no reliable corroborative piece of evidence so as to fasten the liability of the defendants to pay the amount which is debited in the books of account of the insolvent firm. In the case of CHANDRADHAR GOSWAMI AND OTHERS vs. GAUHATI BANK LTD., AIR 1967 SC, 1058, it has been laid down that 'No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business and there has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them'. In the present case, the defendants have challenged the entries in the books of account and their correctness. There is no independent evidence to the effect that the insolvent firm had supplied goods to the defendants for which they had not paid the amount debited in the books of account. In absence of any corroborative piece of evidence, merely the entries in the books of account will not create any liability on the defendants to pay the amount which is debited in the books of account. As stated earlier, the debit entry was subsequently credited in the books of account and Accountant Shantilal had admitted that the amount which was debited was not to be recovered from the defendants because it was spent for maintenance and education of the two sisters. There is no reliable piece of evidence to substantiate the case of the plaintiffs that the insolvent firm was entitled to recover the amount of Rs.15,500/- from the defendants. In my opinion, the entry of the amount debited and subsequently credited in the books of account was not made with a view to defraud the creditors. The said amount was credited as a result of the undertaking given by Kantilal in the custody application being Misc. Civil Application No. 8 of 1960. The learned trial Judge has given cogent and convincing reasons for not accepting the plaintiffs' case. I do not find any infirmity in the finding recorded by the learned trial Judge.

8. As a result of the foregoing discussion, there is

no merit in the First Appeal. It is accordingly dismissed. However, in the facts and circumstances, of the case, there shall be no order as to costs.

(abraham)